DOCUMENT RESUME

ED 080 931 CG 008 227

AUTHOR	Long, Thomas E., Ed.; Hudson, George R., Ed.
TITLE	Shared Responsibility in Student Record Keeping and Dissemination.
INSTITUTION	Counselor Education Press, State College, Pa.
SPONS AGENCY	Meyer Research Inst. of Law, New York, N.Y.
PUB DATE	73
NOTE	53p.
EDRS PRICE	MF-$0.65 HC-$3.29
DESCRIPTORS	*Administrator Guides; *Confidentiality; Educational Accountability; Ethics; *Information Dissemination; Post Secondary Education; Secondary Schools; *Student Records; *Student Rights; Student School Relationship

ABSTRACT

This monograph presents three papers which examine policy questions and the conflict inherent in safeguarding individual rights to privacy and the management of pupil records. The first paper discusses the Russell Sage Document that outlines guidelines for the collection, maintenance, and dissemination of pupil records. To reduce the legal vulnerability of the school in the matter of student records, the document recommends informed consent from parents and pupils, verification of accuracy, limited access, selective discard, and appropriate use of information about students. The second paper deals with problems associated with school records and shared responsibility for student records between public secondary and public post-secondary schools. The third paper addresses itself to "in loco parentis", and student records in shared responsibility situations between secondary schools and institutions of higher education. The monograph concludes with the presentation of specific guidelines for use in shared student records alliances. (Author/LAA)

FILMED FROM BEST AVAILABLE CO

ED 080931

SHARED RESPONSIBILITY

IN STUDENT RECORD KEEPING AND DISSEMINATION

U.S. DEPARTMENT OF HEALTH
EDUCATION & WELFARE
NATIONAL INSTITUTE OF
EDUCATION
THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

EDITED BY:
THOMAS E. LONG
GEORGE R. HUDSON

UD 012 327

ED 080921

SHARED RESPONSIBILITY

In Student Record Keeping

And Dissemination

edited by:

Thomas E. Long

George R. Hudson

The Pennsylvania State University

Counselor Education Press

924 West Beaver Avenue

State College, Pennsylvania 16801

1973

FOREWORD

It is a pleasure to be offered an opportunity by my former colleagues and fellow professionals to share a few observations on this significant conference report. The topic, Shared Responsibility In Student Record Keeping and Dissemination, is or should be of profound concern to every practicing professional. This is particularly true in an age when new methods of collection, storage, and dissemination of information are expanding rapidly and at an historic moment when our government struggles provocatively with the problem of privacy and confidentiality.

This conference on Shared Responsibilities is a third significant event in a chain of events related to consideration of the topic of records. First, the Pennsylvania Department of Public Instruction established the Altoona conference on Professional, Ethical and Legal Responsibility of School Guidance Counselors in Maintaining, Using and Releasing Student Records. Then the Russell Sage Foundation produced Guidelines for the Collection, Maintenance and Dissemination of Pupil Personnel Records. This is the third step in updating the information concerning the status of these developments.

We in the American Personnel and Guidance Association commend the Walter E. Meyer Research Institute of Law for supporting this important effort and congratulate Professors Long and Hudson, as well as their many colleagues and presenters, for this effort.

CHARLES L. LEWIS
Executive Director
American Personnel and Guidance Association

INTRODUCTION

In November, 1970, some fifty counselors from six states gathered for two days at University Park, Pennsylvania, to share their concerns and to develop guidelines for shared responsibility in student record keeping and record dissemination. They listened to presentations of three invited papers dealing with different dimensions of this complex problem and, in small discussion groups, considered such issues as sharing information about students in crisis situations involving law enforcement agencies; sharing information among secondary schools, area vocational technical schools, and community colleges; and research involving student records in shared responsibility schools. From these discussions evolved the guidelines found at the end of this monograph.

This particular conference actually had its origins in two earlier ones. The first, held in Altoona, Pennsylvania, in June, 1968, resulted in a monograph entitled the Statewide Conference on the Professional, Ethical and Legal Responsibilities of School Guidance Counselors in Maintaining, Using, and Releasing Student Records. That conference attracted nearly ninety counselors and other interested educators. Following presentations by Dr. Harry J. Klein, Dr. Walter M. Lifton, and Attorney John D. Killian, the conferees drafted a set of recommendations for state and local guidance agencies with respect to legal and ethical problems in record keeping. That document is available from the Department of Education, Harrisburg, Pennsylvania.

The second conference, whose outcome has had national visibility, was convened by the Russell Sage Foundation at Sterling Forest, New York, in May, 1969. Representing the fields of education, law, psychology, and sociology, twenty invited participants considered at length the ethical and legal aspects of school record keeping. The result was an influential publication entitled Guidelines for the Collection, Maintenance, and Dissemination of Pupil Records.

While the impact of Guidelines cannot be overestimated, nevertheless, the

monograph was not addressed to another area of concern to school counselors and administrators, the responsibility for student record keeping and record dissemination as shared by secondary schools and area vocational-technical schools and by secondary schools and community colleges.

Plans to deal with this subject become a reality when the Walter E. Meyer Research Institute of Law generously agreed to provide funds for the conference itself and for the printing and distribution of the proceedings.

The three speakers whose papers served as the basis for this conference were particularly well qualified for the difficult task they faced.

Dr. Edwin L. Herr, Head, Department of Counselor Education at The Pennsylvania State University, has published widely in the field of guidance and counseling. His interest in problems associated with student records led him, while Director of Pennsylvania's Bureau of Pupil Personnel Services, to support the 1968 Altoona Conference; his critical analysis of the Russell Sage Document was a major contribution to the success of this conference.

Dr. Kenneth E. Carl, President of Williamsport Area Community College, represents an institution that ably serves north central Pennsylvania, a community college which has evolved from the former Williamsport Technical Institute which in turn had its roots in the vocational education programs of Williamsport High School. It was fitting that Dr. Carl dealt with the problems of shared record keeping between a community college and its sponsoring school districts.

Mr. Patrick H. Washington, then Deputy Attorney General of Pennsylvania's Department of Justice and a former educator himself, as part of his official duties specialized in legal problems affecting education in Pennsylvania. His insightful comments are phrased in such a way that a layman can readily grasp the significance of such legal issues as defamation, the need to know, ethics, record transmittal, and in loco parentis.

And so we here present the papers* delivered by Dr. Herr, Dr. Carl, and Attorney Washington, together with the guidelines that grew out of the discussions of educators reacting in the light of their own experiences and

backgrounds. It is now time for these guidelines to be shared with a much wider range of professionals who daily face problems of how to share student records with other institutions in an ethical and legal manner. Just as a good research study raises as many questions for future research as it gives answers to the problem being studied, so, too, we suspect, will this conference summary. The final answers are not here, but the guidelines which have been formulated will move us toward those answers.

Thomas E. Long
George R. Hudson

*Tape recordings of the three major papers may be borrowed from the conference directors for use in in-service programs for counselors.

ACKNOWLEDGEMENTS

The editors are greatly indebted to the Walter E. Meyer Research Institute of Law for supporting this activity. Particular recognition is due Professor Maurice Rosenberg, former director of the Institute, for his guidance and assistance in the evolution of the project.

In addition to the presenters and the conference participants we particularly thank Mrs. Grace Epright, Mr. Ivan E. Miller, and Mr. Robert Newman, three participants who served as small group discussion leaders.

Finally, we thank Thomas E. Enderlein, graduate assistant, for his conscientious attention to so many and diverse tasks related to the conference and to the production of this monograph.

TABLE OF CONTENTS

	PAGE
FOREWORD	i
INTRODUCTION	ii
ACKNOWLEDGEMENTS	v
Guidelines for the Collection, Maintenance, and Dissemination of Pupil Records - The Russell Sage Document - A Basic Tool Edwin L. Herr	1
Problems Associated with School Records and Shared Responsibilities for Student Records Kenneth E. Carl	20
In-Loco-Parentis and Student Records in Shared Responsibility Situations Patrick H. Washington	27
GUIDELINES	41
APPENDIX: List of Conference Participants	43

Guidelines for the Collection, Maintenance, and Dissemination of Pupil Records

The Russell Sage Document -- A Basic Tool

Edwin L. Herr

Professor of Education
and
Head, Department of Counselor Education
The Pennsylvania State University

The document to which reference is made in the title of this presentation is the product of a conference convened by the Russell Sage Foundation in May, 1969. The invited conferees were from different settings--e.g., universities, public schools, courts, and social agencies--and represented such disciplines as law, education, psychology, test development, research and evaluation, and philosophy. The transcendent theme of the conference focused upon policy questions residing in the potential conflict found, on the one hand, in safeguarding individual rights to privacy and, on the other, the management of pupil records.

The initiators of the present conference consider the Russell Sage Document a basic tool for moving from the issues found in it to a different but substantively similar issue, that concerning the theme of this conference, shared record keeping and dissemination responsibilities. The fact is, however, that the Russell Sage Document does not speak to shared responsibilities for record keeping or dissemination as an issue specific to relations between secondary sending schools and area vocational technical schools or between secondary sending schools and community colleges--the major constituency of this conference. Thus the claim to the use of the document as a basic tool has other connotations. It is essentially the first document (1) to develop a set of recommendations which deal with formulating a policy of records management rather than emphasizing almost exclusively the mechanics of types of information to be collected; and, (2) to place the need for a

policy of records management in a context of philosophical-ethical-legal concerns that the procedures of data collection and the use of pupil records represent potential invasion of student/parental privacy. From these vantage points, then, the document is a basic tool not only in its originality of content and format but in its attention to the personal implications that records management policies hold for the records data units, pupils themselves, in either single or shared educational contexts.

The purpose of this paper is to present the essence of the elements of the Russell Sage Document as preliminary input to the deliberations about shared record keeping and dissemination which will follow. In an effort to do this and to maintain some continuity, I will present the separate parts as they appear in the document and then elaborate or pose some alternative conceptions or issues as seems necessary.

Preface

The first of the three introductory sections of the document outlines briefly some of the forces which provide simultaneously the standard of living by which our society has become characterized and also diminish the quality of the spiritual and psychological integrity which define personal freedom. These forces include increasingly bureaucratic organization, technological sophistication, the reality of instant communication, computerized memory, comprehensive recording of data and events, instantaneous retrieval of information--in short, the capability to transform what have historically been "private experiences into public events." This section also introduces the concept of invasion of privacy as relative rather than as absolute when viewed in terms of the balancing between personal privacy and public purpose.

Introduction

The second introductory section of the document calls the reader's attention to the fact that "virtually all school systems now maintain extensive pupil records" containing a variety of cumulative information, but, more

importantly, that "very few systems have clearly defined and systematically implemented policies regarding uses of information about pupils, the conditions under which such information is collected, and who may have access to it." Consequently, school personnel are seen as having to make judgments about such matters in a veritable vacuum without sufficient attention to the legal, ethical, personal issues inherent in such a condition.

Also presented within this section are the questions which provided the framework for the conferees' discussion, the medium through which the recommendations were ultimately forged. I cite them here verbatim:

1. Should schools and school personnel be required to obtain parental and/or pupil permission before collecting certain kinds of information about pupils or their families? If so, what kinds of information?

2. Should the school be required to obtain parental and/or pupil permission before releasing certain information about pupils to parties outside the school? To which kinds of information and which outside parties should this apply?

3. Should school personnel, especially counselors, be protected legally from subpoena by a third party of information collected in the course of a professional relationship with a client (i.e., a pupil)?

4. What rights should pupils and/or their parents have regarding access to information about the pupil possessed by the school? Do school personnel have any obligation (right?) to withhold such information (for example, an intelligence test score) when, in their professional judgment, its release to the child or parent would be harmful to his client?

5. What rights, if any, do pupils, as distinct from their parents, have with respect to information about them? Should a child, for example, have the right to deny his parents access to information about him, such as an intelligence test score?

Preamble

The third introductory section continues the themes of the earlier introductory sections but becomes more specific in its citation of examples of potential abuse in "current practices of schools and school personnel relating to the collection, maintenance, and dissemination of information about pupils" which "threaten a desirable balance between the individual's

right to privacy and the school's stated right to know." Among such examples are:

1. Information about both pupils and their parents is often collected by schools without the informed consent of either children or their parents. Where consent is obtained for one purpose, the same information is often used subsequently for other purposes....

2. Pupils and parents typically have little or, at best, incomplete knowledge of what information about them is contained in school records and what use is made of this information by the school....

3. Parental and pupil access to school records typically is limited by schools to the pupil's attendance and achievement record....

4. The secrecy with which school records usually are maintained makes difficult any systematic assessments of the accuracy of information contained therein....

5. Procedures governing the periodic destruction of outdated or no longer useful information do not exist in most systems...

6. Within many school systems few provisions are made to protect school records from examination by unauthorized school personnel....

7. Access to pupil records by nonschool personnel and representatives of outside agencies is, for the most part, handled on an ad hoc basis....

8. Sensitive and intimate information collected in the course of teacher-pupil or counselor pupil contacts is not protected from subpoena by formal authority in most states....

It is in this section, then, where the gauntlet is thrown down to educators to respond to these alleged abuses in ways which insure that the pupil "information collected can be demonstrated to be necessary for the effective performance of designated educational functions." There is no pretension here to the premise that information about pupils is without value but rather that the information obtained should be clearly related to defensible educational purposes.

Comment on the Introductory Sections

Before continuing on to the specific recommendations regarding collection, maintenance, and dissemination of pupil records, there are some observations to which I found myself responding as I read the document.

One had to do with a feeling of need for a definition of the right to privacy. I found no explicit definition in the document itself. However, The Panel on Privacy and Behavioral Research (The Panel, 1967), has suggested that "the right to privacy is the right of the individual to decide for himself how much he will share with others, his thoughts, his feelings, and the facts of his personal life. It is a right that is essential to insure dignity and freedom of self-determination." The panel further indicates that "the essential element in privacy and self-determination is the privilege of making one's own decision as to the extent to which one will reveal thoughts, feelings, and actions. When a person consents freely and fully to share himself with others.....there is no invasion of privacy, regardless of the quality or nature of the information revealed."

Reubhausen and Brim (1965) in the Columbia Law Review have spoken of privacy in this manner: "The essence of privacy is no more, and certainly no less, than the freedom of the individual to pick and choose for himself the time and circumstances under which, and most importantly, the extent to which his attitudes, beliefs, behaviors, and opinions are to be shared with or withheld from others." Schwitzgebel (1967) has gone further to indicate that "the right or claim to privacy should ideally include also post disclosure rights, that is rights related to the disposition and use of information once it has been freely given." Bennett (1967) has asserted that "strictly speaking, the invasion of privacy is a contradiction of terms.... The real issue is not the right to experience privately, but the right to communicate selectively... In any case, the values involved can best be understood in terms of the management of communication rather than the sanctity of privacy." Thus, the claim to privacy as I understand how the Russell Sage Document uses it seems to be defined in terms of selective and permissive

communication, informed consent if one is to communicate, and the treatment of such communication as privileged and confidential following disclosure with consent.

It is clear that the concept at issue, the right to privacy, is a modern phenomenon. There are no direct references to it in either the Constitution or the Bill of Rights except as regards private property. Indeed, these documents speak of the freedom to speak, freedom to petition, and freedom of the press--essentially freedoms to communicate rather than to withhold communication. But it is nevertheless true that in the last decade revelations of wiretapping abuse, defamations of character stimulated through inaccuracies in financial information promulgated by networks of credit rating bureaus, no-knock search by law enforcement agencies, the use of personality assessment in the civil service and in employment, personal histories required by social welfare agencies, the census, the Internal Revenue Service, as well as the proposed national data bank--all represent potential abridgments of the privacy of adults. Many congressional inquiries have been mounted to examine the implications for undue harassment of personal freedom inherent in these governmental activities. Other inquiries at the federal, state, and local levels have been implemented to consider the use of questionnaires in research, psychological testing, and electronic data processing. One of the possible outcomes which hovers in the background of these investigative activities is legislation so restrictive that the legitimate and the illegitimate, the tolerable and the intolerable uses of personal information will be equally banned. It seems clear that the Russell Sage Document is trying to stimulate the development of policy which will head off the imposition of such restrictive alternatives to planning and foresight on the part of educators.

There is a final point here that seems worthy of note; it refers to the characteristics of those who are potentially affected by invasions of privacy. Most of the potential abuses of privacy cited in the previous paragraphs are

directed at adults. The assumption which somewhat dampens the potential abuse of these activities, however moot it is, is that adults have the maturity and the strength to recognize such abuses and to withhold certain private revelations if they so choose. However, children and youth are less likely to exhibit such control or such recognition of abuse and are therefore more vulnerable to abridgment of their personal dignity than adults. Further, they have been entrusted on the basis of social sanctions to educational institutions to be both educated and, less obviously, protected while being educated. This then means that an essential ingredient in the relationship between students and educational institutions is that of trust. This places the educational institution and its representatives under a fiduciary obligation to insure that its processes of interaction with students are implemented with the fullest regard for the dignity (privacy) of those who are entrusted to it.

Given these observations, it is I think, somewhat easier to put into perspective the principles proposed by the Russell Sage Document as they relate to data collection, maintenance, administration of security, and dissemination.

Collection of Data

The section of the document dealing with information collected from students asserts that the fundamental principle is "that no information should be collected from students without the prior informed consent of the child and his parents" (Sec. 1.0, p. 16). However, it is immediately made clear that this consent can be either individual consent or representational (through the parents' legally elected or appointed representatives, e.g. the Board of Education) (Sec. 1.1, 1.2, p. 16). This is, of course, an eloquent plea for school boards to make policies covering the total management of student information. In the succeeding parts of this section are outlined the types of information for which representational consent is adequate and those types of information which require individual consent.

Basically, the conferees suggest that representational consent is adequate "in situations involving aptitude and achievement testing (whether standardized or informal) and reporting of skill and knowledge outcomes in the subject-matter areas now within the customary curricula of the public schools" (Sec. 1.2.1). Habit/skills tests or vocational interest inventories also fall essentially under the same context (Sec. 1.2.3, p. 17). It is further urged that when representational consent is sufficient, "students and their parents should be informed in advance, by school officials, perhaps annually or bi-annually, of the purposes and character of the data collections" (Sec. 1.6, p. 17), and that, in addition, parents and students be afforded periodic opportunities to question "the necessity or desirability of particular data collection processes, or proposed use of such data" (Sec. 1.6, p. 18).

It is the further premise, however, that individual consent rather than representational consent should be obtained from each child and/or his parents where information is to be obtained from personality testing and assessment or where certain data about a pupil's family is to be obtained, e.g., ethnic origin, religious beliefs, income and occupational data, husband-wife relations. Individual consent is also extended to information not directly relevant for educational purposes. It appears that in this latter case, the burden of proof is placed upon school officials to defend on research or other appropriate grounds why such information has validity.

Procedurally, it is recommended that all individual consent should be in writing, should be obtained from parents and students where the latter are competent to understand the nature of the decision being made, and that such consent is binding only after it is freely given as a result of meaningful efforts by school officials to interpret the purposes and uses of the information to be collected (Sec. 1.3-1.5, p. 17). The principles of informed and individual consent are also considered necessary where data are to be collected for research purposes either by school personnel or outsiders, even under conditions of anonymity and when participation is entirely voluntary.

Classification and Maintenance of Data

This section deals with an elaboration of the types of information found in pupil records and indicates that because they range from tentative uncorroborated reports on alleged student behavior to highly stable information, these differing kinds of data "require differing arrangements for security and release" as well as for the differing forms of consent detailed previously.

Essentially there are four classifications of such data. They are:

1. Category A data -- the minimum personal data necessary for operation of the educational system: identifying data (including names and addresses of parents or guardian), birthdate, academic work completed, level of achievement (grades, standardized achievement test scores), and attendance data. Since these are essentially official administrative records, they need to be maintained in perpetuity (Sec. 2.1, p. 20).

2. Category B data -- verified information of clear importance, but not absolutely necessary to the school in helping the child or in protecting others: scores on standardized intelligence and aptitude tests, interest inventory results, health data, family background information, systematically gathered teacher or counselor ratings and observations, and verified reports of serious or recurrent behavior patterns. Because of the nature of much of this information, the chances for error and ambiguity are multiplied in this category. Great care must be exercised by school officials to minimize such possibilities. It is recommended that parents be periodically informed of the content of these records and their right of access to these data. Further it is recommended that these records by destroyed, or else retained only under conditions of anonymity when the student leaves school (Sec. 2.2, p. 20-21).

3. Category C -- potentially useful data but primarily time-bound to the immediate present: "legal or clinical findings including certain personality test results and unevaluated reports of teachers, counselors and others which may be needed in ongoing investigations and disciplinary or counseling actions." It is recommended that these data be reviewed and destroyed as soon as their usefulness is ended unless it is reasonable to transfer it to Category B. The latter transfer should be effected if two conditions prevail: 1) the usefulness, overtime, if the information has been demonstrated and 2) its validity has been verified, in which case parents must be notified and the nature of the information explained (Sec. 2.3, p. 21-22).

4. Confidential, personal files of professionals in the school--notes, transcripts of interviews, clinical diagnoses, and other personal information used by school counselors, psychologists, social workers in counseling pupils. This information can be considered personal and confidential files of the professional, covered by the same rules as pertain in categories A to C as well as specific arrangements made by the school and the professional or with individual parent and/or students (Sec. 2.4, p. 22).

Comment on Classification and Maintenance of Data

Fundamentally, the classifications of information reflected in the Russell Sage Document reflect a truism voiced several years ago by Haeyn and Jacobs (1967): "In short, the cumulative record folder is much more than an academic record--it is a human document." Thus, the further the information to be collected and maintained departs from description of academic achievement into realms of personality assessment or behavioral interpretation, the larger the range of movement from information which is more or less objective to information which is more or less subjective. Further, the more information departs from data which by its measurement is standardized and reliable, the greater the possibility that the interpretation of its meaning may be at once subjectively arbitrary or episodic rather than continuing in importance. These latter conditions lead to a much greater difficulty in verifying that the information is relevant to the educational purposes of the school, that the interpretation of it is accurate, or that its collection and maintenance will aid rather than abuse the development of the student. This is not to suggest that such information has no value for particular purposes but rather that the purposes and the uses for the information are less susceptible to defense by school officials than information more clearly tied to academic achievement per se. In the major alternative form of organization of pupil information to that of the Russell Sage Document, Heayn and Jacobs (1967) have classified it on a first dimension into Matters of Record--Unrestricted and Matters of Record--Restricted, based upon the degree to which the information is in the public domain or is

essentially private in nature. They further divide the information in each of these categories into information which deals with ascribed status--accruing to the individual through no effort of his own, e.g., name, sex, names and addresses of parents--or with achieved status--accomplished in the course of satisfying the requirements of the school, e.g., subjects selected, grades earned, absences, tardies, and honors.

On a second dimension, as contrasted with matters of record, Heayn and Jacobs describe Matters of Judgment which are evaluative and explanatory rather than descriptive: e.g., standardized test results, rank in class, psychological reports, medical information, etc. As suggested earlier this classification of data indicates a progression from factual to judgmental, from public domain to private. Thus, "the need for interpretive ability, trustworthiness, and professional sophistication on the part of the recipient of the information increases proportionately." Within this categorical frame of reference, Heayn and Jacobs also describe four levels of openness of information (Levels I, II, III, IV) which seem to represent less insistence on parental or student consent for release and more expectations of discretion on the part of school officials than does the Russell Sage Document.

Administration of Security

The recommendations on administration of security can be summarized in the following manner:

1. That schools designate a professional person to be responsible for record maintenance and access and to educate the staff about maintenance and access policies (Sec. 3.0, p. 23).

2. All school personnel having access to records should receive periodic training in security, with emphasis upon privacy rights of students and parents (Sec. 3.0, p. 23).

3. Records should be kept under lock and key at all times, under the supervision of the designated professional (Sec. 3.1, p. 23).

4. Formal procedures should be established whereby a student or his parents might challenge the validity of any of the information contained in Categories A and B (Sec. 3.3, p. 23)

5. It is recommended that the school create a quasi-judicial review panel composed of qualified professional personnel, not to be limited to school employees, to determine the validity of Category C data and to provide for parental challenges of such data on occasions where their transfer to Category B is held to be desirable (Sec. 3.3.1, p. 23).

6. With respect to both challenges and verifications, parents and students should be given rights to counsel, to present evidence and to cross-examine witnesses after receiving written notice of these proceedings and being given reasonable time to prepare for them (Sec. 3.3.2, p. 23).

7. Provisions should be made for an annual review of all data retained in Categories B and C within the context that good cause should be shown for the retention of any of this information (Sec. 3.3.3, p. 23-24).

Comment on Administration of Security

The section on administration of security, while having internal logic when viewed from the perspective of invasion of privacy, also suggests that educators must accommodate to value priorities. That is to say, that under the typical current condition of openness of records, administrators and counselors strive to encourage more teacher use of records for better understanding of students, a greater fulfillment of the cliche "teach the whole child," or more insight into the life space of the student as it potentially affects the educational response of the child. Yet, it seems that teachers do not use pupil records in the way, to the degree, or as comprehensively as they might. If this allegation is true, how will putting the records under lock and key affect attempts to have teachers understand students better? Perhaps the assumption is that if you prohibit access or restrict it, natural curiosity will stimulate greater use. The applications of lock and key to Category C data--unverified interpretations--seem legitimate, but extending this restriction to Categories A and B--level of achievement, intelligence and aptitude tests, interest inventory, family background data--seems far more moot. One also has to ponder what kinds of impediments to individually

prescribed instruction, non-graded processes, curricular modifications built around interdisciplinary responses to clusters of student interests the recommended restrictions of Category A and B data would represent. One can only speculate that it would make the further proliferation of such potentially innovative educational processes more difficult because of the additions to already difficult administrative and logistical problems attendant to such programs.

On the other hand, the recommendations that school personnel having access to records should receive periodic training in security may be interpreted as being only one dimension of in-service programs designed to help create a more effective image of the usefulness of particular kinds of pupil data for differential educational purposes, certainly a desirable goal. In other words, a concern for security of pupil records could be embedded in a comprehensive in-service program which used the concept of security as a stimulus to consideration of what significance different forms of student behavior play in development; the models by which such behavial interpretations are made in different forms of psychological or psychiatric helping services; the importance of accurate behavioral description; the values for effective teaching which pupil records contain; and other matters which should be considered if pupil records are maintained at all.

Another practical matter inherent in the recommendation in this section relates to communication with parents. It is a fairly well accepted, if not well-documented, fact that communicating with parents by school officials is a difficult task. There are a lot of factors contributing to this situation, not the least of which are that some school officials may really not want to communicate with parents and that some parents are afraid to communicate with school officials. In any case, the point is that prior to or concurrent with creating quasi-judicial review panels and procedures for dealing with the validity of data about students, school officials will need to ensure that devices are instituted which heighten communication with all

segments of the parental population not simply those who already feel confident in their rights of access to the school. In this regard, if the use of counsel, as is recommended, seems necessary in proceedings between parents and the school relative to what is or is not included in pupil records, then the school needs to establish communication with legal aid societies and other community agencies which can ensure that all parents, regardless of financial status, have equal access under such a policy.

Finally, it is worth considering voices dissident to holding confidential the information gathered about students. Allen and Hawkes (1970) have recently contended that: "The very nature of the system (maintaining confidential information) would seem to militate against the objective of open and honest dialogue between open and honest people. In subtle yet far reaching ways, the system of confidentiality which permeates education from K through post-doctoral research--and which permeates relations between teachers and administrators as well--teaches a good lesson in intrigue, secrecy, and authoritarianism, rather than a lesson in democratic interaction." They, like the conferees of the Russell Sage guidelines, advocate respect for individual rights but forged through personal challenges and interactions about what is contained in personal, open files, rather than in increasing the secrecy and security which surrounds them.

Dissemination of Information Regarding Pupils

The final section of the recommendations concerns the disposition of student records. Like the other sections, the recommendations regarding dissemination of pupil records are dependent upon the kind of data at issue. Thus, it is recommended that the school may, without consent of parents or students, release a student's permanent record file including Categories A and B (Sec. 4.1, p. 25) to: all school personnel desiring access to pupil records who have a legitimate educational interest, providing they sign a written form indicating specifically the "legitimate" educational interest that they have

in seeking this information; the state superintendent and his officers or subordinates if the intended use of the data is consistent with the superintendent's statutory powers and responsibilities; to officials of other primary or secondary schools in which the student intends to enroll if the parents are notified of the transfer, receive a copy of the record if desired, and have the opportunity to challenge the record's content (Sec. 4.1.1, 4.1.2, 4.1.3, p. 25-26).

The recommendations on dissemination of information further contend that the school may not divulge to any persons other than those already identified any pupil information except with written consent by parents or in compliance with judicial order or subpoena when the parents are notified of such a condition. In addition, the guidelines recommend and outline different procedures for obtaining consent for release of the several categories of data. The guidelines also stipulate, except where state or local laws supersede the point, that student rather than parental consent is necessary if the student reaches the age of eighteen and no longer is attending high school or, whether age eighteen or not, the student is married. In such cases, the student may deny parental access to records.

It is worthy noting here that the state of Delaware passed, in June of 1970, legislation dealing with privileged communication and confidential records which includes the following: "a minor having reached the age of fourteen shall be considered as an adult for the purpose prescribed by this section and his or her witnessed signature on requests prescribed in 1) (b) herein above shall be considered valid and binding in law" (Delaware Code, Title 4, 1970). Section (1) (b) to which the above refers states the following: "Copies of such personnel records shall be furnished upon the signed request of the pupil involved, provided he or she shall have then reached the age of fourteen, to any other school, college, university or institution to which the pupil involved may apply or be transferred or to any employer or

prospective employer he shall designate or to any licensed physician which the pupil shall designate...." Apparently, at least on this point, the Russell Sage Document is more conservative than is the legislature of the state of Delaware. I am not aware of any other legislation across the nation which stipulates such responsibility to students at age fourteen. I am, however, confident that once such a precedent has been established in law proliferation of such legislation will occur.

To return to the Document, then, in the concluding portions of the section on dissemination of pupil information, it is recommended that either a child, or his parents or guardian, or their legal representative, may have access to Category A data earlier identified as the official administrative record. Curiously, however, the conferees recommend that parents may have access to Category B data, but not students except with parental permission. Again, may I remind you that Category B data includes scores on standardized intelligence and aptitude tests, interest inventory results, health data, family background information, systematically gathered teacher or counselor ratings and observations, and verified reports of serious or recurrent behavior patterns. One could argue that with the exception of the latter items, ratings and reports of behavior, the other information is more personally generated and owned by the pupil than Category A data and represents the foundational ingredients for student planfulness and decision-making about the occupational, educational, and personal options available to him. Restricting student access to such data important to his involvement with counselors or teachers whose responsibility it is to help him know himself more fully through an essentially private relationship with them seems difficult for this reader to put into perspective.

Concluding Sections

The section on dissemination of information regarding pupils is the last of the sections dealing with recommendations. There are final sections dealing with implementation procedures through the use of sample questions or

critical incidents and sample forms which schools might use to explain or obtain different levels of consent. These sections are clear and because of spatial limitations will not be discussed here.

Summary

The Russell Sage Document, if it does nothing else, reaffirms how complex is the management of freedom and the individual rights by which such freedom is defined. It illuminates the issue that within the current context of accountability and rising humanistic pressures, a prime source of potential educational vulnerability is the way in which records of individual encounters are maintained, used, and disseminated. The recommendations relative to reducing such vulnerability which pervade this document include such recurring principles as "informed consent (from parents and pupils), verification of accuracy, limited access, selective discard, and appropriate use" (Sec. 410, p. 25) of information about pupils. Also permeating these recommendations is the need for treating pupil information as uniquely personal to the individual described and therefore deserving of the highest order of confidentiality.

The recommendations in the Russell Sage Document have been treated as basic to any policy formulation about management of pupil records not because this is a selection of all possible answers to the issues identified. Rather, it has been described as basic because it establishes a framework from which such answers can be evolved in planned approaches on the problem of individual rights as they appear in the diversity of local settings. Throughout this document there is an eloquent plea for foresight and planning as contrasted to ad hoc and fragmented reactions to the incipient problems arising in this sector of education.

Finally, it should be noted that there is no direct analysis of the enhanced complexity of managing student records which accrues in the use of computerized memory, copying machines, or electronic data processing. Yet, the principles identified in the document are no less valid because the

management tools are more complex or the ease of dissemination is greater; they become even more critical to the diminution of possible violations of individual rights when aethical automated procedures supplement professional discretion. Neither does this document speak directly to the issue of shared responsibility between dual educational contexts or the transition of students from one to another educational context except in the general section on dissemination of pupil information. It is, however, clear that the more persons dealing with the same records or communicating about them the greater the probability of transmitting unverified data, clerical recording errors, and selective or subjective interpretation of the information by different officials. Such concerns are heightened with the potential abuses present in the wide-spread availability of copying machines or when student records are transferred not only within a system or a geographical region but across the nation. How to respond to such concerns is the next area of this conference's agenda. It is clearly a challenge both intellectually and ethically.

References

Allen, D. W. and Hawkes, G. W. Reconstruction of Teacher Education and Professional Growth Programs. Phi Delta Kappan, 1970, LII, 4-13.

Bennett, C. C. What Price Privacy? American Psychologist, 1967, 22, 371-376.

Delaware Code, Title 14, Chapter 14, Section 4114. Privileged Communication and Confidential Records. Passed June, 1970.

Heayn, M. H. and Jacobs, H. L. Safeguarding Student Records. Personnel and Guidance Journal, 1967, 46, 63-67.

Reubhausen, O. M. and Brim, O. G. Privacy and Behavioral Research. Columbia Law Review, 1965, 65, 1184-1211.

Russell Sage Foundation. Guidelines for the Collection, Maintenance, and Dissemination of Pupil Records. The Foundation, New York, 1970.

Schwitzgebel, R. Electronic Innovation in the Behavioral Sciences: A Call to Responsibility. American Psychologist, 1967, 22, 364-370.

The Panel on Privacy and Behavioral Research. Privacy and Behavioral Research: Preliminary Summary of the Report. American Psychologist, 1967, 22, 345-349.

Problems Associated with School Records

and

Shared Responsibilities for Student Records

KENNETH E. CARL

Director

Williamsport Area Community College
Williamsport, Pennsylvania

I shall limit my remarks on this topic to those problems and responsibilities that may be found between public secondary and public post-secondary schools. Further, I shall limit my remarks to those public secondary and public post-secondary schools operated wholly or in part by the same public school district. Examples would be a community college and the participating school districts that sponsor the community college, or a technical institute or an area vocational technical school (AVTS) that offers high school or post-high school education services to one or more participating school districts. Unless indicated otherwise, all references to community colleges may likewise apply to a technical institute or area vocational technical school.

I am sure that all will agree that there is a most evident distinction between the relationship of member district high schools to a community college operated by these districts and their relationship to other institutions of higher education in the matter of exchange of student record information.

The community college and its participating districts as well as AVTS and their partner schools enjoy common bonds which are inherent in a condition of local community support of both the sending and receiving institutions. This partnership in support of the organizational structure and educational processes of the community college makes the college an extension of each member district's school system for higher levels of education. Lines of communication already

exist which serve the mutual concerns of local districts and the college in a manner which is somewhat difficult to achieve between those districts and other institutions of higher education. Because a unique commonality of interest and purpose affects all levels of the community college operation, from the deliberations of a representative Board of Trustees to the maintenance of communications between the college staff and each member district's administrative and guidance personnel, it appears that guidelines for the maintenance of confidentiality in records transfer need to reflect this bond. Guidelines for the exchange of records between participating secondary schools and the community college could be more liberal in the scope of record exchange than those guidelines which would govern exchanges of student record information generally. The flow of information from the member district secondary schools to the community college and return should differ little, if any, from that which exists between grades of the respective home high schools. This procedure should also be true in area vocational school settings.

The primary question to be asked relative to the sharing of records is why? Why do we share records? The way this question is answered will establish the guidelines and parameters in the search for answers to the other subordinate questions such as what information is to be shared? When is it to be supplied? What form is it to be in? Who sends the information? Who receives it, etc.?

Since we are talking about sharing information, there is inherent in the statement a structural need for a two-way flow, that is, from the junior to the senior institution, conversely from the senior to the junior institution, and between partner institutions. When we ask the question, why do senior institutions need records from junior institutions, I suggest the primary rationale is the utilization of these records to predict. What they predict is the chance for academic success in the program for which the individual student has applied. Ancillary to this is a need to know in what areas, if any, the student will need remediation or developmental work to increase his chances of success. In this respect, I am only talking about the need for <u>academic</u>

records which include data relative to courses taken, grades, I.Q. scores, rank in class and attendance records.

I would emphasize that I am here talking only about a "need to know" relative to academic material. I am not in support of transmittal of disciplinary or counseling records. Transmittal and utilization of such material do not significantly contribute to prediction of success which I see as our primary rationale. It is to be assumed that if disciplinary action or counseling problems existed, they would have been reflected in the academic record. There are other considerations in the transmittal of such data, legal in nature, which are not the subject content of this paper.

With the reasons for record keeping defined, the other questions become relatively easy to answer. What information is to be sent? Academic records which contain data mentioned above, i.e., course taken, grades, I.Q. scores, etc. When is it to be supplied? When the student is applying for admission to a program. At this time it is needed for predicting the student's success or academic needs. Who needs the information? I would suggest control of this process by the guidance and counseling office. Who receives it? The office at the receiving institution responsible for initial evaluation. What form is it to be in? The hoped-for goal would be the development of a standard format. There are many reasons given for local inventiveness and variations of forms, most of which I feel have to do more with a form of "institutional pride of ownership" than with real reasons. With the advent of computers to record these data there will be movement toward a standardized format. Failing this, in the interest of sanity and visual strain on those who must evaluate the material, I would ask on their behalf that forms be legible.

Now let us look at the other side of the flow or records from the receiving institution to the sending institution. The critical question here again is why. Why does the sending institution need feed-back data? I suggest that feed-back should contain data which will allow the sending school to evaluate the articulation of programs between the two schools. Data feed-back should

help answer whether students are being adequately prepared and served. The data should alert the guidance and counseling office as to whether local efforts are best serving their students. In a dollars and cents dimension are they getting the best mileage for their dollar? The types of information which I would see of value to the sending schools would be such things as: names of students accepted and attending, programs in which students are enrolled, semester, placement on transfer and grade point averages. Relative to the GPA it might be well if the sending schools had releases signed by the students when they apply to the senior or partner institution for admission. A copy of this release should then be forwarded to the partner institution.

When the function of record transmittal is defined, the process becomes meaningful. It should be mentioned that inherent in record sharing activities are strong elements pointing toward an underlying condition called "accountability." Unless the institutions are willing to accept the involvement and expand the efforts needed to change and correct weaknesses and extend or expand strengths pointed out by this two-way feed-back system, perhaps it would be best to continue the present confusion.

The main problem in the case of a community college working with all of its sponsor school districts is to have common record forms and information sheets which are meaningful to all sponsor school districts and the community college. Our community college now has 19 sponsor school districts. You can readily see the problem of having all 19 (and these could be 32 such school districts within a few years) agree on such standardized forms that can be used by all. Each, of course, has its own record system and forms which do not necessarily supply that information which we, in the community college, need. I am sure that we do not intend to mail a different student data sheet to each of the individual sponsor districts of our college. We do now forward the same student report to each such sponsor district at the end of each semester indicating the student's name and home address, program enrolled in, last semester attended, grade point average, as well as indicating any special notes

such as student on probation, quit to enter armed services, transferred to senior institutions, etc. We are very willing to add any additional information which all of our 19 school districts agree is essential for their purpose.

Really the problem is communication between our partner institutions and ourselves as to what information and records are desired and essential in order to proceed to accomplish what we all know we should.

Up to this point I have been speaking about student records as may be exchanged between the academic sector of our secondary schools and a community college. We, in the community college, as well as in the AVTS or technical institutes, who operate our schools on an annual tuition or contract basis with each sponsor school must feed back to the sponsor district, as justification for billing that school district, a print-out or student record which contains the information that I have previously listed. This print-out goes to the business manager, board secretary, or superintendent of schools as justification for our tuition billing for the semester. It is questionable if this printout ever reaches the guidance counselors in some districts, yet counselors might best use this information.

The superintendent, board members, board secretary and/or business manager, being fiscally responsible, must check this listing and certify to us that the students are residents of their sponsor district. They also require information as to whether the student is full-time, part-time, or enrolled under Continuing Education because of the unique billing costs for each student category. Likewise they must be informed of any students who are terminated prior to completion of program, and the reason for termination, as well as those on probationary status. I have one sponsor school board which actually writes a letter to every student who is on probation or weak in his grade point average, noting that he is in this status and suggesting that he apply himself more diligently to his studies. In any case, some very appropriate consumers may be denied information in our present feed-back system.

May I say at this time that the only record we release to our sponsor

district boards in regard to grades is the GPA and this is released only if we have an authorization form signed by the student and the sponsor district representative.

We have no fears in releasing a copy of a student's academic record to the guidance counselors of our sponsor school districts for follow-up purposes. In regard to the responsibilities for such records as we share in this environment, I do believe that if we all follow the APGA Ethical Standards or such other standards as may be adopted by that Association we will have met our responsibilities. Summarily, we should share information with those persons in our respective partner institutions who will use the information for professional purposes.

I do not believe at this time that we in the public community colleges, at least, are very much interested in any secondary school records for any person who has been out of high school for a period of five years or longer -- perhaps even three years might be better -- other than whether or not the student graduated. I say this because the public community college is for people who are interested in further education in an "open door" or "second chance" institution, and we should like to see them start with a clean slate and prove to us what they can do. After this post-high school period of time those that do return seem more highly motivated and should be given every chance to succeed. The fact that they ranked in the lower half of their high school class and earned a number of low grades in English and in mathematics should not be held against them.

Through the appropriate sharing of records we can help junior high school, senior high school, AVTS and college guidance counselors work together. All four groups can help a student with his problems of adjustment, course selection, and such program changes as may be indicated through his educational career. I believe that when these programs are developed and put into operation we will have a better understanding among our counselors of the student's problems. Thus our responsibilities will be better met and the full results of our counseling

efforts for each student will be realized in a more meaningful way. Appropriate record sharing will help us in these efforts.

In summary, the shared record keeping problems that deserve all of our attention as I see them are these:

1. We must keep in mind and foster the attitude that we have an ethical responsibility to the student and to the partner institution in its service to the student.

2. We must consistently be on guard to prevent our record transmittals from negatively stereotyping the individual.

3. In developing our record systems we must make them reflect only the information which we can realistically use in our individual and shared situations.

4. We must develop forms which are simple yet are realistically generalizable and helpful to all partner institutions.

5. We must help partner institutions receive the information they legitimately need.

6. Lastly, and of most importance, we must maintain absolute confidentiality of data to protect the privacy of the individual.

In Loco-Parentis and Student Records in Shared Responsibility Situations

Patrick H. Washington

Deputy Attorney General
Commonwealth of Pennsylvania

I was asked to address you today on the legal problems which you may encounter in shared record keeping--shared between an institution of secondary education and an institution of higher education, or a comparable institution, i.e., secondary to vocational-technical school, or secondary to community college. These include record transmittal up from the previous educational institutions, if I may use the term up to the higher educational institution, or downward--the extent to which recordation is transmitted downward to the previous institution, and the legal difficulties arising therefrom. Then, too, there is lateral record sharing, i.e., area vocational school and sending school situations.

Defamation

The legal difficulties arising from shared record keeping responsibilities are legally and precisely the same as those encountered when the records are solely in the possession of a single educational institution. Those of you who have addressed yourselves to these legal difficulties are well aware of them, but a short review would be in order.

The most immediate legal problem faced is that of defamation; that is, a law suit brought by an irate student or parent because certain information was released by the school (or by you personally, perhaps) to a third party--this third party meaning those not parents or guardians of the pupil and not those associated with the school--someone else, an outsider, if we can use the term. The release causes irateness because it was unfavorable to the student. Seldom, I suggest, do you have a law suit when the results are

favorable; it is almost always when the results are unfavorable for some reason.

The first point you must bear in mind, the best legal advice I can give you, is that you cannot stop a person from suing you. Any fool can bring a law suit against you personally or against your school regardless of whether there is merit to the suit or not. The crucial point that a lawyer asks is this: what is the possibility of recovering, regardless of the community effect of a law suit being filed against you, regardless of the poor publicity, regardless of what detriment it may do to you if you are in a counseling situation, regardless of your personal reputation? Even if you are removed presently from the actual counseling business and you now train counselors, a law suit doesn't do you any good. But the point that a lawyer always asks is, what is the possibility of recovery? You cannot stop someone from filing the law suit, but what is the likelihood that he will be successful?

Let me cite a practical example. You have given certain information to a person or a party who is not connected with the student and not connected with the school. The person or party receiving the information may be a prospective employer, a corporate personnel officer, a probation office employee, a law enforcement officer, a nosey neighbor, or a student's former principal who is interested in the student's progress in higher education. You release the information and for whatever reason the results upset the student or the student's parents. Let us assume the upset party is the student and that, being of legal age, he goes to consult an attorney on his own.

Is There a Case?

In weighing whether he should take the case and whether he should represent the individual, the attorney must first consider whether there is a case. The case most often depends upon whether the inquiring party, the party requesting information, had a need to know. If he did, the likelihood

of a law suit at all is dim. If he did not have a need to know and if you released the information anyway, you may find yourself named as a defendent in a law suit.

As I said before, any fool can sue you or your school, but the question is what is the likelihood of the court granting the fool's request? The answer to this depends heavily on your judgment as a professional, your judgment as to what records should be released to whom and when. I assure you that if you have acted responsibly, using your best judgment as a trained professional, the odds of a law suit being successful against you are bleak. If you have acted responsibly and if that professional responsibility is apparent to the attorney consulted--that is, if the manner in which you have acted is responsible and it is evident that it is responsible--the attorney consulted by the irate student will not even take the case. The attorney will recognize in advance that even though the client seated in front of him is irate, even though the client is boiling and wants to sue somebody because of adverse information released, nonetheless the possibility of winning in a law suit is heavily offset by the professional, responsible manner in which you, the educator, have acted. How do you act responsibly?

Need to Know

A layman's rule of thumb that I offer is this: what is the inquirer's need to know? As a person, a professional counselor, involved in testing and the assessment of test results, you are best acquainted with the usefulness of the data you collect. The record probably has accumulated test scores and personal facts about the student's scholarship, family, class attendance personal health, behavior, behavioral characteristics, social and athletic activities and perhaps even previous employment notations. All this is in the file; you have gathered it over the years.

I suggest no one inquirer needs all of that information, and if professionally as an educator you decide for yourself that no one inquirer asking for information needs all of that information, the courts will honor your judgment in that respect.

It would be irresponsible for you (and open you up to a law suit) if you were simply to provide the file to the inquirer in the guidance office for the interested party to peruse at his leisure. It contains much more information normally than that party needs to know. You or your counselors must exercise a judgment as to what the inquirer's legitimate interest is and then sort out of the file those pieces of data that are not pertinent.

Tests results may be irresponsibly presented. What kind of test was it? It is elementary to all of you that certain tests measure lower or higher than other tests on the same individuals at the same time under the same conditions, and they measure higher or lower consistently. You recognize this; you know the types of tests. You take this into consideration in reviewing the test scores for a six or eight year period and then you act accordingly. But the personnel manager from the local corporation may not be aware of this even though he speaks and acts knowledgeably of your problems as a counselor. He acts as if he knows what particular brand of test score which way, but perhaps he does not. The data should either be interpreted to him by you or, better yet, merely summarized by you in short form with recommendations. My advice is that you do not release the actual paperwork or data, page by page, score by score, sheet by sheet, but that you take a short period of time, review the data, formulate your own notes, your own recommendations and then, as a professional who has some idea of this particular individual inquired about, make your own summarized recommendation and notation to the inquirer without releasing the actual test (file) results themselves.

Ethics

I offer to you an observation that is quite old in the law. "Law follows the people's expectations." Some have joked about this and said, "Yes and the law is always a little bit late and behind." The point is this--if the ethics of your position as a professional educator--as a counselor, or an administrator--require certain judgments of you and these ethics set standards for the exercise of those judgments, the law will

recognize these judgments and these standards. It will respect them and will apply them as criteria if you are ever called to answer that judgment.

As a professional who is trained in evaluating human personality, you are often in the best position to comment on an individual's prospects in the social structure. You are by your position exposed to the individual's traits, habits, comments, performance, and perhaps even his individual confessions. By the same token, your training tells you what these data are worth. They must be weighed and you do that consistently; they must be judged and you do that consistently. All data must be taken with a grain of salt and you know how to do that. This is what you do consistently but this is what your inquirer does not do. He does not take it with a grain of salt; he does not weigh one piece within the fabric of the whole. That is the flaw in releasing information, whether you release it as the sole educational institution which obtains all of it over a twelve or fourteen year period or whether you are releasing it in a shared record keeping situation--upward, downward, or laterally. You know what relevance the bits and pieces have, what importance you would attach to measured aptitudes that are ten years old. Your inquirer, however, groping for some conclusions as to the kind of person the subject is, does not so weigh the data. This unspoken transmittal of the fabric of an individual personality in bits and pieces may be erroneous in result when weighed by a third party who did not gather it or who did not know the individual. Fortunately, the law tries to protect individuals against haphazard personality portraits.

Permanency of Records

It appears that even though your files may record an individual's social and political views, his attitudes, his general attitude, his private life, his loyalty, his patriotism, I suggest that the reason your files contain this recordation is to enable you successfully to work with the individual as you have responsibility toward him or her. Only you or your legitimate associates need the information. The material was not garnered to be

available as a permanent record on the individual. You who garnered the information know its values; you know how haphazard it might be. You know that if you were in the same situation you might not trust it as a record of yourself. Accordingly, this information should not be available to inquirers at a later date except under extreme circumstances. The nature of the information is not such as to be considered a public record in the law, and the courts of law will honor this approach by you.

In finishing what we would call the short review of the legal principles applicable when a single educational institution is in control of recordation, there are still the legal principles applicable to the release situation. If you were in attendance in 1968 at the Penn Alto Hotel in Altoona when Attorney John Killian addressed the group there, he outlined in detail the legal principles applicable to release of information when the single educational institution was in control; and if it is not available to you at this time, I would suggest you contact Dr. Long.[1] It is an extremely good address, presenting pertinent legal remarks governing the situation when one educational institution is in control of the information. I am of the opinion personally, that the same rules apply to that situation where there is shared record keeping.

You can minimize a law suit by being orderly and responsible in the release of information. Not overly cautious, not fearful, but responsible--asking who it is that wants to know and what his legitimate interest is. This same responsible approach is your best legal weapon in the event that you or your local school are sued for releasing information. Now what does this mean in the shared record keeping situation?

Record Transmittal

You may recall that I stated that legal principles applicable in the shared situation were the same as those in the instances when the information was held by one single educational institution. Undoubtedly, society has now accustomed itself to the idea that when a student decides to move on to

an institution of higher education or specialized training, his record follows him. Society has accustomed itself to the idea that the record is transmitted. The question you as a responsible counselor should ask is what part of the record? Certainly the academic standing, the units of education, and the extent to which the person was exposed to various courses of study: linguistic training, mathematics, social sciences, physical sciences. It has been my experience that the transmittal upward does not normally ask for the other detailed recordation that has been gathered over eight or twelve years of the education process at the primary and secondary level. It does not normally ask for the details.

If they were asked for--meaning the other details, the disciplinary records, the notations as to demeanor, conduct, attitudes, habits--I suggest that the other educational institution normally has no legitimate interest in these data.

I am as aware as you, if not more so, of the present problems. As a Deputy for the Department of Education of the Commonwealth of Pennsylvania, I am also chief counsel to the State Police. I am aware of the drug culture problems. I am also aware of the problems with the disaffected young, with the rebellious attitude, if we may call it that, of the new generation. Nonetheless, I suggest to you that in weighing the differences, in weighing the various conflicting interests, the cooperative educational institution or the institution of specialized training normally has no legitimate interest in data other than academic. I premise this conclusion on several grounds which you may wish to examine.

You recall that the legal principle is, what is the need to know. The need to know of the record sharing institutions, whatever institution it is that you are transferring records to, depends heavily on what you consider to be the function of this related institution in society. I will grant you that it is concurrently your job to appreciate what the institution itself considers its function to be, because they are the ones demanding the information. I do not ignore for a moment the fact that counselors, especially

in the secondary education situation, are anxious to place their graduates in higher education or in specialized training. Placement is an important part of the business. Secondary counselors must, by the nature of their work, be attentive to the demands of the higher education institution or the institution desiring information. Neither do I disregard for a moment the fact that the institution considering an application is apprehensive about taking on more than its share of problem students, more than its share of those who are inclined to make a career out of tearing up the campus.

Nonetheless, the educational, the ethical, and the legal challenge to those who transmit information is to decide what the legitimate interest of the other institution is. This challenge goes so far as this: if the partner educational institution's concept of itself, and its concept of what information it needs to weigh applicants, exceeds in your professional judgment that which you think the institution's need to know, your professional obligation as a counselor at the secondary level calls you to restrict that information and decline to offer all the information called for. This is not a legal maxim necessarily. It is not even an educational maxim as such. It is a judgment that each counselor must made as a professional who knows the value of the information garnered--a judgement as to what the requesting institution needs to know. This involves a judgement by the counselor himself, the professional, as to what the function is of the requesting institution--the function of that requesting institution in the social fabric. Such judgment takes courage but it is your professional obligation. If that duty and obligation is exercised, I suggest the law will honor it. I would have no qualms as an attorney defending you in presenting such an approach. As you are undoubtedly aware, this involves some judgements on my part, an opinion, if you like, that is not necessarily a legal opinion or a legal judgment and one which I am perhaps not entirely competent to make, since it deals in the field of education and I have not been totally in education now for some years as an educator. In order that

you may weigh my judgments for yourself, however, let me set out several premises for your examination, and you weigh them, judge them, and decide whether you wish to accept them or discard them.

The Demise of In Loco Parentis

I suggest that even though we have been raised with the maxims that too much knowledge never hurts, too much data on an individual never hurts, too much knowing a person never does any harm, I suggest nonetheless that imperfect facts, partial facts, and facts based on your subjective judgment and transmitted to third parties for their use may do more harm than good. I suggest that even though the typical college or university, the vocational-technical school, the community college, or the junior college have long been imbued with the obligation to raise the student socially, morally, and religiously, as well as academically, I suggest this approach is no longer feasible. I suggest that it is educationally dead. The reason I raise this issue--this concept of acting in loco parentis--is if it is educationally dead, it will not be long until it is legally dead. The law follows the people's expectations.

The average student today of age sixteen or eighteen is far more wise in the ways of the world and its pitfalls than you or I were at the same age. Granted that there still is in many students an emotional immaturity, the approach to correction of this situation is no longer, I suggest, the application of the in loco parentis doctrine--the training institution acting as a wise father and mother, guiding the student in his every move. Frankly, in my experience, which I suggest to you may not be competent but which I throw out for your own judgment, in loco parentis no longer works.

I suggest also that the social fabric at this time places education as a finishing technique, a vocational preparatory process, a rounding off of the man or woman as that person prepares to enter society as a recognized adult, but it is my premise that by the time the individual steps into an institution of higher education, into that process, into those influences,

then the influences on him socially and morally are not any longer primarily those of the institution. I do not personally believe the institution can do much more, at the time, in shaping moral, social and religious characteristics. The reason I believe that this is pertinent to you is, that if that is the educational truth at this time, it will not be long until it is the legal truth, for the law follows the people's expectations and it will follow the educational principles as they become clear.

Accordingly, I am of the personal opinion, and it shapes my legal judgment, that the institution of higher or specialized education ought to get out of the business of acting in place of the parents, even when parents expect the institution to act in loco parentis. I suggest that it is most often the case of the parent hoping the educational institution will succeed where the parent has not and has recognized that he has failed.

Now what does this mean in the context of these remarks? It means that when the secondary counselor is considering what information to send over in a shared record keeping situation, he must exercise judgment as to what the function is of the requesting institution and then must exercise a further professional judgment as to the need to know in light of that function.

Legal Expectations

What of legal liability in this transmittal between the educational institution up or down or across from a high school to a voc-tech perhaps? People are accustomed at this time to the concept that educational recordation is normally transmitted between educational institutions. Accordingly, you will encounter far less difficulty, complaint, or law suit in releasing information in these situations between educational institutions than if you release it to a third party and outsider--potential employers and the like. The only reason that this is so at this time is because people are accustomed to these record transfers. Now I suggest to you that here may be an instance where the law may precede the people's expectation and not follow it. This is an instance where you as professionals recognize the lack of a need to know in the asking institution. You recognize it before

the public does generally, and then you act accordingly in tramsmitting the information even though the public does not at this time demand it and even though they do not at this time expect you to be as confidential with records in transmitting them to another educational institution as you would be in transmitting them to a third party. Nonetheless, dependent upon what your view is of the requesting institution's function, this may be an instance where you as the professional determine that there is less of a need to know in the requesting institution than the public generally expects, and you act accordingly.

Now what of transmittal downwards? Let us assume for the moment that you are the registrar of a community college which is supported by funds from area school districts. The school district expresses an interest in their protege's progress: "How is Johnny doing in the community college?" What is your obligation legally and, just as much important, educationally?

Your obligation will flow from your educational and ethical considerations, not necessarily the legal considerations. As we said before, if you as professionals establish certain standards in transmitting information and follow them consistently, the law will honor them. If you are concerned with your legal obligation, the first question is what is your professional obligation? When you are considering transmittal of information, I think the answer is found by determing what is the need to know. Arguments have been advanced that the educational institution can best revise, reshape, and reform itself by weighing the progress of its graduates, by following them, by checking them. The argument goes on that the institution can adapt itself to student needs and changing social demands by carefully watching the paths that graduates take. If <u>this</u> be the need to know, I personally agree with it. If this be the reason why the high school, taking our hypothetical situation, wants information from the community college as to how its protege is doing--how the protege is fending in the higher educational process or specialized training process--I believe that this is a valid interest. I believe such interest justifies release of that information

which would indicate to the requesting institution how that student is doing, so that they can evaluate their own preparation process.

Information Feedback--Local Resources

Arguments have also been advanced that the sending school, the school which has prepared the person and sent him on to another institution, should be made aware of the individual's disciplinary record, his deportment, if you like, in the new situation. Why? We're told that this enables the home community to bring local resources to bear to help the wayward youth if his deportment is not up to snuff. What resources? Let me cite you a related example.

For decades in the juvenile court system--juvenile courts and you--the concept has been that the juvenile court system has two functions: a) identification of the wayward youth and his retention, and b) referral of the person for treatment or rehabilitation or social or educational adaptation to that which society expects of him. This was the concept for forty or fifty years and the law recognized it. The law said this is the juvenile court process and it sounds good and we will not interfere with it. Significant, perhaps, is the fact that in the history of the United States Supreme Court they have only three times ever taken a juvenile case, three times in a 190 years in the history of the court, three juvenile cases! This was the theory, advanced basically by educators and by sociologists, that we ought to identify students who were deficient juveniles whose progress in entering society was not quite what was expected of them--and then refer them to those who were most capable of helping: reform schools, retention homes, work schools, forestry camps, what have you--it varies from state to state. The Supreme Court has recognized for years that this was a state problem and that the theory sounded good; therefore, let the states do it. The Supreme Court has consistently refused to take other than three cases in 190 some years.

In 1967 they took the third case known as In the Matter of Gault, recorded at 391 United States Reports, p. 1. It was a case that arose in

Arizona, and the lawyers compounded several legal arguments as to why a juvenile, who had been restricted in some way and referred to a forestry camp in Arizona, ought to be released and should not have been branded a delinquent. The Supreme Court, to everyone's surprise, took the case and then, in a series of opinions, many of them written by the individual justices, seemed to vent their views on how the juvenile process was going.

What they said was this: it was a good idea in years past to identify individuals who were in need of help and then to refer them to the various social agencies, whoever they were, whatever kind they were, to reform, reshape, help and make these youngsters into able adults ready to enter society. But regarding the institutions to which they were referring the students, the various social and educational and forestry camps and what have you, the courts said that it was then clear that these institutions did not have at this time the behavioral knowledge to reform them. The treatment process has not worked; the identification and custody process certainly had. We have nabbed individuals right and left who were delinquent; we have said they were delinquent; we have brought them before a court of law and then referred them for treatment. But the court said that it was clear that in light of the state of present knowledge in the behavioral sciences the treatment has not worked.

What does this mean to you? In the transmittal of information downward, when you are attempting to identify a need to know in the lower institution and it is offered to you that their need to know is couched in terms so that they can exercise an interest in the welfare of the individual when he is back in the community and they can bring community resources to bear on his situation, I suggest you ask yourself, what resources? Just as the Supreme Court recognized that rehabilitative process in the treatment of delinquents has not worked, in much the same manner the proffered community resources at reshaping the wayward individual who is away at school of higher education or a community college may or may not work. It is your judgment as an educator as to whether the community resources available are sufficient enough to

justify your releasing the information. It is not my judgment. It is not even really a court's judgment. The court would be the first to admit that it cannot tell. It is your judgment. If the resources are not there, then I suggest to you that educationally, ethically, and legally the information as to the student's deportment should not be released. What good will it do? More harm than good, I suspect.

All of us (and I say "us" because it was noted that I was at one time an educator)--all of us engaged in the process of educating youngsters have been exposed to the whims and the ways of the young barbarian as we attempt to prepare him to enter society. All of you are well aware of what the value of information is and how you would weigh it yourself. You know its worth, but only you really know its real worth. In the transmittal process, as they used to say, "Something is lost in the translation." I suggest to you that if community resources are not sufficient to enable the community to deal effectively with the youngster's problem as you see it, then there is no need to know. The information should not be released. If this is the educational judgment over a period of years, it will in time be the legal judgment also, for the law follows the people's expectations. The law will honor your professions's educational judgment in what should be released and what should not.

---

[1]Attorney Killian's speech was later published in the Personnel & Guidance Journal, February, 1970, 48.6. 423-432.

Guidelines

The following guidelines have resulted from conference small group activities. The editors urge readers to consider these statements only as preliminary and specified suggestions; others will surely evolve as the profession deals with and becomes more thoroughly involved in shared record alliances. These guidelines are to be considered subsequent to the provisions documented in the Russell Sage Guidelines.

Administrative provisions

1. A record committee should be established and should include representatives from each participating institution in the record sharing agreement. The function of this committee shall be to monitor and control all record sharing activities.

2. Each participating unit should establish a records advisory committee which should be representative of parents, students, school staff, and school solicitor. The function of this committee shall be to monitor in-school record maintenance activities and to advise the unit representative on the permanent records committee.

3. Each partner institution should designate one specific individual or department to be responsible for receiving and transmitting all student record related data.

4. Participating units should attempt to utilize summary data whenever possible, thus reducing the amount of transmission involving individual student data.

5. All records should be monitored under conditions of maximum security to insure protection against invasion of privacy. Only authorized persons who need specific information to carry out their assigned responsibilities should have access to student records.

6. Standard records and working forms should be developed and utilized by all participating units for the collection, storage, and transmission of data.

7. All individuals involved with data collection, storage, and transmission in each participating unit should be made aware of the special legal requirements affecting record use in the various programs of the participating units: e.g., advanced placement offerings, area vocational-technical centers, local community colleges, adult programs, etc.

8. When utilizing student data, individuals should be especially

cognizant of implications of health-related information for the demands of specialty training, particularly when participating units offering vocational or occupational training are involved.

9. When information is transmitted between participating units, only requested data, tempered by the need to know, should be provided. Maximum provision should be made for the protection of information and the privacy of the individuals involved.

10. When record sharing institutions are lateral extensions of one another (e.g., a high school and a vocational-technical center), student record information should flow between the schools much as it would between any two units in the same school district.

Research and Follow-up

11. Whenever possible student record information collected in research conducted by outside agencies should have the written consent of parents of the students involved.

12. To avoid redundant collections of data, especially in shared record situations, school-sponsored studies should be developed to meet the follow-up requirements of all local, regional, and state cooperating agencies.

13. In research and follow-up studies only that record information should be collected which is related to the study. Such information should also be confined to information related to the pupil's educational process and progress.

14. Research and follow-up studies should preserve the anonymity of students. It is advisable that student's consent be obtained if identifying information is to be collected and possibly re-collected in longitudinal studies.

15. In research and follow-up studies involving partner institutions, a brief abstract stating the scope and purpose of the study, as well as copies of instruments to be used, should accompany any request for student information. The abstract and instruments should be reviewed independently by the records advisory committee of each school involved and should earn the approval of the permanent records committee which is representative of all institutions in the partnership.

16. In high school follow-up and research studies, post-secondary partner institutions should provide to appropriate local school personnel, upon written request, administrative data concerning former students. This data-sharing should be predicated on a need to know and should enable the sending school to pursue research and to do curriculum revision, student counseling, financial planning and placement.

APPENDIX

LIST OF CONFERENCE PARTICIPANTS

Albright, James C.
Guidance Counselor
Rocky Grove High School
403 Rocky Grove Avenue
Franklin, PA 16323

Austin, Welton E.
Dir. of Instruction
Jefferson Co. DuBois AVTS
Drawer 100
Reynoldsville, PA 15851

Biesuz, Mary R.
Guidance Counselor
Gateway High School
Moss Side Blvd.
Monroeville, PA 15146

Bloom, Halbert R.
Supr. of Trades & Industry
Eastern Mont. Co. Area Vo-Tech. School
175 Terwood Rd.
Willow Grove, PA 19090

Bolger, Herbert S., Jr.
Counselor
Altoona Area Vo-Tech
1500 4th Ave.
Altoona, PA 16601

Borelli, Louis J.
Guidance Consultant
Dept. of Education
Bur. of Pupil Personnel Services
Harrisburg, PA 17126

Chesney, Ray
Asst. to Supt. in Charge of Secondary Instruction
Wilkes-Barre City School Dist.
730 S. Main St.
Wilkes-Barre, PA 18702

Darrah, Charles A.
Dean of Students
Boyce Campus, Comm. College of Alleg. Co.
595 Beatty Rd.
Monroeville, PA 15146

DeSau, George T.
Director of Counseling
Williamsport Area Comm. College
1005 W. 3rd St.
Williamsport, PA

DeWalt, David A.
Dir. of Guidance
Easton Area School System
25th & Wm. Penn Highway
Easton, PA 18042

Donaldson, Helen
Director of Guidance
Swarthmore High School
Swarthmore, PA 19081

Dutt, Karl
Student Services Coord.
Eastern Co. Northampton Vo-Tech School
R.D. 1, Kesslerville Rd.
Easton, PA 18042

Epright, Grace S.
Guidance Counselor
Altoona Area High
6th Ave. at 15th St.
Altoona, PA 16603

Grieve, Gaylene
Counselor
Indian Lane Jr. High School
Rose Tree Media School District
309 S. Middletown Rd.
Media, PA 19063

Hanawalt, Frank R.
Coord., Area Vo-Tech Schools
Dept. of Education
Box 911
Harrisburg, PA 17126

Hammond, Rodger K.
Guidance Counselor
Hollidaysburg Area School
North Montgomery St.
Hollidaysburg, PA

Hartman, James, Jr.
Guidance Counselor
Hollidaysburg Area High School
N. Montgomery St.
Hollidaysburg, PA

Hartman, E. Brad
Supr. of Pupil Services
Central Dauphin School Dist.
600 Rutherford Rd.
Harrisburg, PA 17109

Heckman, Anna R.
Coord. of Guidance Services
School Dist. of the City of York
329 S. Lindbergh Avenue
York, PA 17405

Hill, George P.
Registrar
Lehigh Co. Comm. College
2370 Main St.
Schnecksville, PA 18078

Hiltz, Dorothy E.
School Psychologist
Board of Education - Room A-211
145 Palmer Road
Yonkers, N.Y. 10701

Impellitteri, Joseph T.
Chairman
Graduate Studies and Research
Department of Vocational Education
The Pennsylvania State University
University Park, PA 16802

Keyock, Gerald R.
Supr. of Child Accounting
Bethlehem Area School Dist.
1330 Church St.
Bethlehem, PA 18015

Kloess, William A.
Dir. of Registration
Erie Comm. College
Main & Youngs Rd.
Buffalo, N.Y. 14221

Koch, Robert F., Jr.
Guidance Counselor
York Co. Vo-Tech School
2179 S. Queen St.
York, PA 17403

Koss, Josephine M.
Counselor
Gateway Sr. High School
Moss Side Blvd.
Monroeville, PA 15146

Lambrou, James P.
Guidance Coord.
Steel Valley Area Tech. School
4920 Buttermilk Hollow Rd.
West Mifflin, PA 15122

Lybarger, William M.
Guidance Director
Camden Co. Vo-Tech Schools
Box 566, Berlin-Cross-Keys Rd.
Camden, N.J. 08081

Lunger, Glenn S.
Ch. Guid.
Williamsport Area High School
1046 W. Third St.
Williamsport, PA 17701

McCloskey, I.L.
Guidance Director
Columbia Montour Area Vo-Tech
R.D. 5
Bloomsburg, PA 17815

McPherson, James A.
Guidance Coordinator
Schuyler-Chemung-Tioga B.O.C.E.S.
431 Philo Rd.
Elmira, N.Y. 14903

Miller, Fred A.
Dean of Student Services
South Campus, Comm. College of
Allegh. County
Sixth & Market Sts.
McKeesport, PA 15132

Miller, Ivan H.
Supr., Bur. of Guidance
State Education Dept.
55 Elk St.
Albany, N.Y. 12224

Mott, Stephen
Coordinator
Eastern Northampton Co. Vo-Tech
School
R.D. 1, Kesslerville Rd.
Easton, PA 18042

Neu, Herbert W., Jr.
Asst. Principal
Mellon Jr. High School
Mt. Lebanon Public Schools
Bower Hill Rd. & Moffit St.
Pittsburgh, PA 15243

Newman, Robert
Principal
Ocean Co. Vo-Tech School
West Water St.
Toms River, N.J. 08753

Nopper, Lewis H.
Assoc. Dir. of Records
Monroe Comm. College
Box 9892
Rochester, N.Y. 14623

Price, Joseph B.
Asst. Prin. for Student
Personnel Services
Cochran Rd. (Mt. Lebanon H.S.)
Pittsburgh, PA 15228

Rarig, Kathleen C.
Counselor-Instructor
Mercer Co. Comm. College
101 West State St.
Trenton, N.J. 08608

Saunders, R. Harold
Asst. to Supt. in Charge of
Special Services
Wilkes-Barre City School Dist.
730 S. Main St.
Wilkes-Barre, PA 18702

Schenck, Charles
Dir. of Admissions
Ulster Co. Comm. College
Stone Ridge, N.Y. 12401

Scofield, Harry
Guidance Counselor
Sussex Co. Vo-Tech School
105 N. Church Rd.
Sparta, N.Y. 07821

Starkey, Thomas G.
Dir. Voc. Guid.
Centre Co. Vo-Tech School
Pleasant Gap, PA 16823

Sullivan, Robert
Guidance Counselor
Rogers High School
Newport, Rhode Island 02840

Thomas, Carolyn L.
School Psychologist
Williamsport Area School Dist.
605 W. Fourth Street
Williamsport, PA 17701

Tuero, Keren C.
Registrar
Catonsville Comm. College
800 S. Rolling Rd.
Catonsville, MD 21228

Turgeon, Eugene
Registrar
Ulster Co. Comm. College
Stone Ridge, N.Y. 12401

Vaughn, Crata
Supr. of School Counseling
School Dist. of Phila.
21st & Parkway
Philadelphia, PA 19103

Walters, Robert L.
Vice-Principal
Penn Hills Sr. High School
12200 Garland Drive
Pittsburgh, PA 15235

Wardlaw, McKinley, Jr.
Guidance Counselor
Kent Co. Vo-Tech Center
Box 97
Woodside, Delaware 19980

Weaver, John
Coord. Pupil Services
North Montco Area Vo-Tech School
Sunneytown Pike
Lansdale, PA 19446

Welsh, Harry
Supr. of Pupil Services
Wilkes-Barre City School Dist.
730 S. Main St.
Wilkes-Barre, PA 18702

Wood, Mary Jean
Guidance Counselor
Altoona Area High School
6th & 15th St.
Altoona, PA 16603

Young, James A.
Guidance
Jersey Shore High School
Thompson St.
Jersey Shore, PA 17740